THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 27145 of 2006

O r d e r:

The petitioner was appointed as a Cleaner (Shramik) in the 2nd respondent-APSRTC on 12.06.1989. While working as such, based on the report of the Assistant Mechanical Foreman dated 29.10.2000, he was issued a charge sheet, dated 10.11.2000, alleging that he unauthorizedly absented from his duties from 16.09.2000 to 28.10.2000. The petitioner, having received the charge sheet, failed to submit any explanation. Thereafter, an enquiry was initiated against him. Since the petitioner despite receiving the enquiry notices, failed to appear for the enquiry, the Enquiry Officer, conducted the enquiry *ex parte,* and submitted his report holding that the charges framed against the petitioner are. Based on the said enquiry report, a show cause notice was issued to the petitioner calling upon him to show cause as to why he shall not be removed from service, and the petitioner also has not submitted any explanation. Hence, the petitioner was removed from service by order dated 25.07.2001 of respondent No.2. Assailing the said order of removal, the petitioner preferred appeal and review petition before the appellate and review authorities, which were rejected. Thereupon, he raised an industrial dispute in I.D. No. 61 of 2002, and the Labour Court, by award dated 19.04.2004, dismissed the same and confirmed the removal order passed against the petitioner. Assailing the award of the Labour Court, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the Labour Court failed to observe that the petitioner has produced the sick

certificate for the period from 16.09.2000 to 23.09.2000 and due to change in line of treatment the sick certificate for the subsequent period could not be submitted. He further submitted that the Labour Court also failed to observe that principles of natural justice are violated in the conduct of enquiry, in that without giving reasonable opportunity to the petitioner, the enquiry was conducted. He submitted that the order of removal passed against the petitioner is shockingly disproportionate to the gravity of misconduct alleged, and that the Labour Court, without properly appreciating the material available on record, erred in confirming the removal order passed against the petitioner. He thus, prays to set aside the award of the Labour Court and allow the writ petition.

On the other hand, learned Standing Counsel for the 2nd respondent-APSRTC reiterating the counter averments submitted that despite acknowledging the charge sheet and enquiry notices, the petitioner neither submitted any explanation to the charge sheet nor attended before the Enquiry Officer, and the charges against the petitioner stood proved in the departmental enquiry. The disciplinary authority passed order of removal, which was confirmed by the appellate and review authorities. He further submits that the Labour Court, after considering the fact that the petitioner has not shown any interest either by submitting any explanation to the charge sheet or by producing any evidence in domestic enquiry to prove the reasons for his unauthorized absence and by filing necessary medical certificate for the entire period of unauthorized absence, rightly confirmed the order of removal, and the same cannot be said to be illegal and arbitrary, warranting interference by this Court.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

In that, the jurisdiction, to issue a writ of certiorari and quash the order of punishment imposed on a delinquent employee, is supervisory and the Court exercising it does not act as an appellate Court. This limitation, necessarily means that findings of fact reached by the inferior Court or Tribunal, as a result of appreciation of evidence, cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, it must always be borne in mind that a finding of fact recorded by the Tribunal cannot be challenged in certiorari proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of

evidence led on a point, and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred under Article 226 of the Constitution of India to issue a writ of certiorari can be legitimately exercised. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. To be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error (See **Syed Yakoob v. K.S. Radhakrishnan**[2] and **Ranjeet Singh v. Ravi Prakash**[3]).

It is within the confines of this limited area, the impugned award of the Labour Court, may be judged.

Though the learned counsel for the petitioner contends that no reasonable opportunity was given to the petitioner before passing the removal order and principles of natural justice are violated, the fact remains, the petitioner, having received the charge sheet, failed to submit any explanation to the same. That apart, in spite of receiving the notices on three occasions and final notice on 31.03.2001, issued by the Enquiry Officer directing him to attend for enquiry, the petitioner failed to attend before the Enquiry Officer, and he also failed to give any explanation to the show cause notice issued. The petitioner has not submitted any reasons for his not giving explanation to the charge sheet and for not attending for domestic enquiry. The Labour Court, after taking all the said aspects into consideration, has held despite

giving fair and reasonable opportunity to the petitioner, he failed to avail the same. Hence, the contention of the petitioner that no reasonable opportunity was given to him and principles of natural justice are violated, cannot be countenanced.

The petitioner was charge sheeted alleging that he unauthorisedly absented from his duties from 16.09.2000 to 28.10.2000. The charges leveled against the petitioner, stood proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service, which was confirmed by the appellate and reviewing authorites. The Labour Court, upon analyzing the evidence before it, and having found that the petitioner has not shown any interest either by submitting any explanation to the charge sheet or by producing any evidence in domestic enquiry to prove the reasons for his unauthorized absence and by filing necessary medical certificate for the entire period of unauthorized absence, held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges. The findings, as recorded above, arrived at by the Labour Court being based on proper appreciation of the evidence on record, I see no reason whatsoever to interfere therewith, more so when the charges leveled against the petitioner stood proved in the departmental enquiry and the petitioner failed to point out any infirmities in the conduct of the departmental enquiry.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[4], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In such circumstances, I am of the considered opinion that no interference is

called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 14th December 2007.
KSR

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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] 1964 (5) SCR 64
[3] (2004) 3 SCC 682
[4] (2005) 3 SCC 254